

The Honorable Tana Lin

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Aesthetic Eye Associates, P.S.,

Plaintiff,

v.

Alderwood Surgical Center, LLC;  
Northwest Nasal Sinus Center P.S.,

Defendants.

No. 2:22-cv-00773-TL

**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

Alderwood Surgical Center, LLC;  
Northwest Nasal Sinus Center P.S.,

Counter-Plaintiffs,

v.

Aesthetic Eye Associates, P.S.,

Counter-Defendant.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties

1 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
2 protection on all disclosures or responses to discovery, the protection it affords from public  
3 disclosure and use extends only to the limited information or items that are entitled to confidential  
4 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
5 confidential information under seal.

6 2. "CONFIDENTIAL" AND "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"  
7 MATERIAL

8 2.1 "Confidential" material shall include the following documents and tangible things  
9 produced or otherwise exchanged:

- 10 a) the financial books and records of the producing party and financial information  
11 pertaining to the financial books and records;
- 12 b) information about the revenues, costs, expenses, profits and losses of the producing  
13 party;
- 14 c) information about the producing party's short and long-term business plans;
- 15 d) information about the producing party's marketing strategies and plans;
- 16 e) information about the producing party's policies or practices;
- 17 f) contracts that the producing party has with suppliers, vendors, customers, contractors,  
18 subcontractors;
- 19 g) licensing agreements;
- 20 h) any information which the producing party is obligated by contract or state or federal  
21 law to keep confidential;
- 22 i) information the producing party's business competitors could use to obtain a business  
23 or legal advantage over the producing party; and
- 24 j) Protected Health Information ("PHI") that is deemed private under federal and state  
25 law, including but not limited to the Health Insurance Portability and Accountability  
26

Act of 1996 and regulations promulgated thereunder ("HIPAA") and/or Chapter 70.02 of the Revised Code of Washington, such as:

- i. names;
- ii. all geographical subdivisions smaller than a State, including street address, city, county, precinct, and zip code;
- iii. all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;
- iv. telephone numbers;
- v. fax numbers;
- vi. electronic mail addresses;
- vii. social security numbers;
- viii. medical record numbers;
- ix. health plan beneficiary numbers;
- x. account numbers;
- xi. certificate/license numbers;
- xii. vehicle identifiers and serial numbers, including license plate numbers;
- xiii. device identifiers and serial numbers;
- xiv. web universal resource locators ("URLs");
- xv. internet protocol ("IP") address numbers;
- xvi. biometric identifiers, including finger and voice prints;
- xvii. full face photographic images and any comparable images; and/or
- xviii. any other unique identifying number, characteristic, or code.

2.2 "Highly Confidential - Attorneys' Eyes Only" material shall include information that the party believes is of such an extremely sensitive or secret nature that disclosure of such information to any other party or non-party reasonably poses the risk of competitive injury and

1 may compromise and/or jeopardize its business interests even if protected by a Confidential  
2 designation.

3 3. SCOPE

4 The protections conferred by this agreement cover not only confidential material (as  
5 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
6 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
7 conversations, or presentations by parties or their counsel that might reveal confidential material.

8 However, the protections conferred by this agreement do not cover information that is in  
9 the public domain or becomes part of the public domain through trial or otherwise.

10 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
12 or produced by another party or by a non-party in connection with this case only for prosecuting,  
13 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
14 categories of persons and under the conditions described in this agreement. Confidential material  
15 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
16 that access is limited to the persons authorized under this agreement.

17 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
18 by the court or permitted in writing by the designating party, a receiving party may disclose any  
19 confidential material only to:

20 (a) the receiving party's counsel of record in this action, as well as employees  
21 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

22 (b) the officers, directors, and employees (including in house counsel) of the  
23 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
24 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
25 designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this  
2 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

3 (d) the court, court personnel, and court reporters and their staff;

4 (e) copy or imaging services retained by counsel to assist in the duplication of  
5 confidential material, provided that counsel for the party retaining the copy or imaging service  
6 instructs the service not to disclose any confidential material to third parties and to immediately  
7 return all originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom disclosure is  
9 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
10 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
11 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
12 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
13 under this agreement;

14 (g) the author or recipient of a document containing the information or a  
15 custodian or other person who otherwise possessed or knew the information;

16 (h) mediators retained by the parties to resolve this matter.

17 (i) For confidential material designated "HIGHLY CONFIDENTIAL -  
18 ATTORNEYS' EYES ONLY," access to, and disclosure of, such material shall be limited to  
19 individuals listed in paragraphs 4.2(a) and (c), (d), (e), (f), (g), and (h).

20 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
21 referencing such material in court filings, the filing party shall confer with the designating party,  
22 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
23 remove the confidential designation, whether the document can be redacted, or whether a motion  
24 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
25 designating party must identify the basis for sealing the specific confidential information at issue,  
26 and the filing party shall include this basis in its motion to seal, along with any objection to sealing

the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), where the document format permits, the designating party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" to each page that contains confidential material as defined under Section 2. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). When material is produced in a format that does not allow for such designations, the designating party must include the term "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" in the name of the file.

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a

1 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
2 in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
11 regarding confidential designations without court involvement. Any motion regarding confidential  
12 designations or for a protective order must include a certification, in the motion or in a declaration  
13 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
14 affected parties in an effort to resolve the dispute without court action. The certification must list  
15 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
16 to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
18 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
19 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
20 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
21 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
22 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
23 the material in question as confidential until the court rules on the challenge.

24 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
25 LITIGATION



1 If a party is served with a subpoena or a court order issued in other litigation that compels  
2 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
3 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" that party must:

4 (a) promptly notify the designating party in writing and include a copy of the  
5 subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to  
7 issue in the other litigation that some or all of the material covered by the subpoena or order is  
8 subject to this agreement. Such notification shall include a copy of this agreement; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
10 the designating party whose confidential material may be affected.

11 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
13 material to any person or in any circumstance not authorized under this agreement, the receiving  
14 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
15 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
16 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
17 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be  
18 Bound" that is attached hereto as Exhibit A.

19 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
20 MATERIAL

21 When a producing party gives notice to receiving parties that certain inadvertently  
22 produced material is subject to a claim of privilege or other protection, the obligations of the  
23 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
24 is not intended to modify whatever procedure may be established in an e-discovery order or  
25 agreement that provides for production without prior privilege review. The parties agree to the  
26 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material; *FURTHER PROVIDED*, counsel for a party may certify that Confidential documents attached to email and stored in counsel's email systems will continue to be maintained securely and consistent with the provisions of this Order.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: March 23, 2023

DATED: March 23, 2023

**K&L GATES LLP**

**PERKINS COIE LLP**

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Northwest Nasal Sinus Center P.S.

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

Dated this 24th day of March 2023.



Tana Lin  
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of *Aesthetic Eye Associates P.S. v. Alderwood Surgical Center, LLC; Northwest Nasal Sinus  
Center P.S.*, Case No. 2:22-cv-00773-TL. I agree to comply with and to be bound by all the terms  
of this Stipulated Protective Order and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
will not disclose in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_